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An Empirical Analysis of Client Satisfaction among Female Criminal Defendants Receiving Legal Aid¹

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1. Methodology

My doctoral thesis, written in Finnish and titled *Rikosasian vastaajaa avustavan asianajajan lojaalisuusvelvollisuus* [The Criminal Defence Lawyer's Duty of Loyalty]², examined an attorney's obligation of loyalty to his or her client. The research drew on not only theoretical materials but also empirical data, one source being a survey of prisoners. The survey provided insights into observance of the duty of loyalty by eliciting clients' experiences of how well they felt they had been represented.³ Loyalty was also examined empirically through a survey of attorneys and an analysis of decisions made in cases that had come before the Disciplinary Board of the Finnish Bar Association. The chosen approach views attorney loyalty as a legal practice in terms of the question of 'ought' and/or 'is'.⁴ The observance of loyalty is relatively difficult to measure, but the approach chosen here can be considered rather successful in doing so.

Surveys generally entail the possibility that one will obtain unanticipated, contradictory or insufficient evidence of the focal issue. This is the more likely, the smaller the sample of respondents is. A limited sample thus poses a considerable risk of error. For reasons of research economy, however, it was necessary to limit the scope of the prisoner survey conducted in the present case. The survey was carried out in two closed prisons. Obtaining more definitive research results would have required implementing the survey on a larger scale.⁵ Examining a large number of factors simultaneously inevitably increases the seriousness of the problem of error.

A total of 56 prisoners responded to the survey, of whom 13 were women. The survey indicated that female prisoners had a comparatively critical attitude towards court

¹ Text in English *Foley, Richard*.

² Criminal defence lawyer's duty of loyalty.

³ See *Ahtinen, Jukka*: *Rikosasian vastaajaa avustavan asianajajan lojaalisuusvelvollisuus*. University of Lapland. Rovaniemi 2017, p. 14–19.

⁴ On law from the perspective of Ought and Is, see *Ross, Alf*: *On Law and Justice*. The Lawbook Exchange, Ltd. Clark, New Jersey, 1959, p. 20–21.

⁵ *Ahtinen* 2017, p. 15–16. See *Kultalahti, Jukka*: *Empiirinen metodi oikeudellisen tulkinnan apuvälineenä*. Teoksessa *Empiirisen oikeustutkimuksen kokemukset, haasteet ja tulevaisuus*, p. 15–43. Joensuun yliopistopaino, Finland 2010, p. 24.

proceedings and attorneys.⁶ This view was consistently evident throughout the survey. As I did not have the opportunity to analyse this finding in sufficient depth within the scope of my doctoral research, I have chosen it as the focus of the present article, whose principal scientific interest lies in the realm of legal sociology. The research draws on the survey of prisoners to compare men's and women's experiences of legal aid during their trials, with the analysis including a discussion of the correlations between these experiences. The article is intended as a first step in investigating the issue, written with a view to future research on the question. It provides a perspective on a relevant and timely topic but one that is fairly narrow in scope and underresearched: the position of female criminal defendants as legal aid clients. Obtaining a representative statistical sample permitting generalizations would have required a far more extensive survey.

The last item in the survey asked the prisoners to give a school grade, ranging from 4 to 10, for "client satisfaction" to the attorney who had assisted them. This made it possible to calculate on a question-by-question basis the average grade given by those choosing a particular response and, further, to compare the correlations between the responses and the averages. The measure which I have chosen to highlight in analysing the prisoner survey is thus the grade that prisoners gave to their attorneys, with this reflecting the respondents' experiences and perceptions of the assistance they received. Throughout the analysis, the grades serve as the basis for the comparisons made.⁷

⁶ In the context of the survey, "attorney" may refer to an advocate, a public legal aide, or counsel who has obtained the requisite license or authorization to act as an attorney or counsel under older legislation (Code of Legal Procedure, 15:2, 17.6.2011/718).

⁷ Ahtinen 2017, p. 338—342.

2. Survey findings on legal aid to female defendants

2.1. Recipient and provider of aid

The article draws on the average grades received by attorneys as a basis for comparison illustrating client satisfaction. It examines the legal assistance provided to female respondents primarily by comparing the responses of female and male prisoners as proportions by category.

The results on client satisfaction among male and female prisoners can also take into account the gender of the attorney.

Table 1. Significance of parties' gender in the legal aid assignment, Prisoner survey, items 4, 10, 40.⁸

Respondent		Attorney	n	%	Average grade
Female	n=13 (24 %)	Female	2	4	7.0
		Male	10	19	6.4
Male	n=42 (76 %)	Female	6	11	8.5
		Male	35	66	7.9 (n=33) ⁹
Tot.	55 (100 %)		53	100	

Based on the grades (average) received by the attorneys, female prisoners were less satisfied with their attorneys than male prisoners. Prisoners were, as a rule, slightly more satisfied with female counsel. This finding drew attention to the possible significance of the gender of the parties in the assignment.

Another factor that merits investigating is the clients' experiences of how approachable their attorneys were.

Table 2. Gender of attorney and perceived approachability, Prisoner survey 10, 22, 40.¹⁰

Attorney	n	%	Average	Number considering attorney easily approachable
Female	8	15	8.1	7 (88 %)
Male	46	85	7.6 (n=44)	33 (72 %)
Tot.	54	100		

Female attorneys received somewhat better grades than male, and were thus somewhat more frequently perceived as being more approachable. The gender of the legal aid client and counsel can be considered at the same time, but no relevant proportions can be presented where the sample is based on single cases.

⁸ Ahtinen 2017, p. 304.

⁹ A smaller value for n appears in some cases where respondents did not give their attorney a grade; the figure is the average for those who did give a grade.

¹⁰ Ahtinen 2017, p. 305.

Table 3. Approachability of counsel, Prisoner survey 4, 10, 22, 40.

Respondent	Attorney	Approachability	n	Avg.
Female (n=12)	Female	easy to approach	1	9.0
		harder to approach	1	5.0
	Male	easy to approach	6	7.3
		cannot say	4	5.0
Male (n=39)	Female	easy to approach	6	8.5
	Male	easy to approach	25	8.8 (n=24)
		harder to approach	7	4.4
		cannot say	1	7.0

The prisoner survey indicates that easily approachable attorneys received a higher grade on average from their clients.

The following table examines the possible significance of the gender of the attorney for the grade given by the client for diligence.

Table 4. Attorney's perceived diligence, Prisoner survey 4, 10, 24, 40.

Respondent	Attorney	Diligence	n	avg.
Female (n=12)	Female	very diligent	1	9.0
		cannot say	1	5.0
	Male	very diligent	1	9.0
		sufficiently diligent	2	8.5
		slightly indifferent	4	6.3
		totally indifferent	1	4.0
		cannot say	2	4.5
Male (n=37)	Female	very diligent	3	9.7
		sufficiently diligent	1	8.0
		slightly indifferent	1	4.0
	Male	very diligent	7	9.4
		sufficiently diligent	16	8.6
		slightly indifferent	5	5.6
		totally indifferent	3	4.0
		cannot say	1	7.0

The analysis of clients' perceptions of diligence reveals that attorneys who were considered very diligent received clearly higher grades in comparison to attorneys who were perceived as being indifferent. Another observation is that male prisoners gave slightly higher grades than female prisoners did to attorneys perceived as being very diligent. Not one female attorney (n=7) was rated "totally indifferent", whereas four male attorneys were (n=42).

Due to the limited sample, it is not meaningful to analyse the component questions of the survey more extensively in terms of the gender of the attorney. Rather, the focus in what follows will be on the possible significance of the gender of the client. It is not important to highlight the significance of the attorney's gender; the salient consideration is whether the

gender of the client should be taken into consideration to some degree in carrying out a legal aid assignment. Taking into account the client's gender may have, among other benefits, implications for avoiding unnecessary tensions in legal aid assignments.

2.2. Client and sentence

Clients' experiences of how fair their trials were are necessarily shaped by their perception of how their attorney handled the case. In other words, being assigned a legal aid attorney is an important aspect of a fair trial.

Table 5. Perceptions of fairness of the trial, Prisoner survey 2, 4, 40.

Respondent	Trial	% F/M	n	avg.
Female (n=12)	fair	17	2	9.0
	fair in part	25	3	8.0
	unfair	50	6	5.2
	cannot say	8	1	5.0
Male (n=40)	fair	25	10	8.6
	fair in part	33	13	7.5 (n=11)
	unfair	38	15	7.6
	cannot say	5	2	9.5

The female prisoners who responded to this question perceived their trial as being unfair comparatively more often than did male respondents. Women prisoners who felt that their trials were unfair also gave their attorneys far lower grades than did male prisoners with the same perception. The sample obtained indicated that a perception that one's trial was unfair might have led to dissatisfaction with one's attorney more readily among female prisoners than among male.

Client satisfaction can be examined further in light of how fair the clients considered the outcome of their trials.

Table 6. Perceptions of fairness of sentence, Prisoner survey 3, 4, 40.

Respondent	Sentence	% F/M	n	avg.
Female (n=12)	fair	8	1	9.0
	fair in part	8	1	8.0
	unfair	75	9	5.8
	cannot say	8	1	9.0
Male (n=40)	fair	18	7	9.1
	fair in part	23	9	7.0
	unfair	55	22	7.9 (n=21)
	cannot say	5	2	9.5

In relative terms, female prisoners considered their sentences unjust more often and, correspondingly, just less often than male prisoners did. Female prisoners who felt that sentences were unjust also gave significantly worse grades to their attorneys than did male

prisoners who felt the same way about their sentences. Only one female prisoner stated that her sentence was just.

The two foregoing tables suggest that the trial and sentence may affect satisfaction with one's counsel more often in the case of female than in the case of male prisoners. This result can in part be explained with reference to the type of offence involved: the offences for which the female prisoners were convicted tended to be serious threats to life and health of the victim.

Of the 13 women responding to this item, 11 stated that the principal basis for their sentence was an offence involving a serious threat to the life and/or health of the victim. Eight of them received sentences of over four years. The average grade they gave to their attorneys was 6.8 (n=8). The average grade given by men been sentenced for comparable offences was 7.9 (n=9).¹¹

A further factor meriting consideration is the age distribution by gender of the clients.

Table 7. Distribution of respondents by age and gender, Prisoner survey 4, 5, 40.

Respondent	Age	% F/M	n	avg.
Female (n=12)	under 30	25	3	7.0
	30—50	58	7	6.6
	over 50	17	2	5.5
Male (n=41)	under 30	29	12	8.1
	30—50	59	24	7.9 (n=23)
	over 50	12	5	8.0 (n=4)

There is little or no difference between the age distributions of male and female respondents. One pattern worth noting in the data is that female prisoners' satisfaction with their counsel seems to have decreased with age. Among male prisoners satisfaction was essentially the same in all age categories.

Another point of interest is whether the length of sentence affected client satisfaction.

Table 8. Breakdown of respondents by length of sentence, Prisoner survey 4, 6, 40.

Respondent	Length of imprisonment	% F/M	n	avg.
Female (n=12)	less than 2 years	17	2	5.0
	2—4 years	17	2	7.0
	more than 4 years	67	8	6.8
Male (n=39)	less than 2 years	21	8	6.9
	2—4 years	41	16	8.6
	more than 4 years	38	15	7.8 (n=14)

The dissatisfaction of prisoners serving prison sentences of less than two years can be explained by the fact that the sentences imposed were unconditional. The Finnish Criminal Code (Chapter 6, section 9.1) provides that a sentence of imprisonment not exceeding two years may be conditional.

¹¹ Ahtinen 2017, p. 305.

In the case of both genders, client satisfaction as measured by the grade given to counsel was highest among prisoners serving a sentence of what might be termed intermediate length. On this measure, too, female prisoners were clearly more critical than male. Another factor possibly affecting client satisfaction with the handling of a legal aid assignment is whether the respondent has served a term in prison before.

Table 9. Number of prison terms, Prisoner survey 4, 8, 40.

Respondent	Time in prison	% F/M	n	avg.
Female (n=12)	First	58	7	6.9
	Second	8	1	9.0
	Third or more	33	4	5.3
Male (n=41)	First	20	8	8.3
	Second	15	6	6.8
	Third or more	66	27	8.2 (n=25)

The majority of the female prisoners were serving their first prison term, whereas most of the male prisoners were serving at least their third. The grades given to attorneys indicate that female recidivists were far more critical than male. In the case of women, “becoming a professional criminal” seems to increase criticism towards legal counsel far more than in the case of men. By contrast, female prisoners serving their second term were more satisfied with their attorneys than the corresponding male prisoners.

2.3. ”Client loyalty”

How receptive clients were to the legal aid they received may also be examined in terms of the frequency with which they changed counsel.

Table 10. Attorney retainment, Prison survey 4, 12, 40.

Respondent	Attorney	%s F/M	n	avg. (most recent attorney)
Female (n=11)	no change	55	6	7.5
	change	45	5	5.6
Male (n= 41)	no change	76	31	7.8 (n=29)
	change	24	10	8.5

Nearly half of the female respondents had changed attorneys, whereas only one-fourth of the male respondents had. Yet, in light of the grades given, satisfaction with a new attorney among the women changing attorneys was rather low. By contrast, male prisoners who changed attorneys were satisfied with their new counsel.

Client satisfaction can also be examined in light of how many times a defendant had been a client of his or her defence attorney.

Table 11. Number of times as client, Prisoner survey 4, 14, 40.

Respondent	Attorney	% F/M	n	avg.	Number engaging same attorney
Female (n=12)	first assignment	75	9	5.9	2 (22%)
	aided previously	25	3	8.3	3 (100%)
Male (n=40)	first assignment	48	19	7.7 (n=18)	9 (47%)
	aided previously	53	21	8.2	17 (81%)

In the case of female prisoners, only one in four had been assisted by the same attorney before, whereas over half of the male prisoners had had the same attorney earlier. In light of the grades given, female clients who had had the same attorney previously were significantly more satisfied. Among male clients the corresponding difference was considerably smaller. This finding suggests that female prisoners are far more demanding, particularly on the first occasion that they are being assisted by a particular attorney. Then again, the higher proportion of women who were serving their first prison sentence is necessarily reflected in their perceptions of the first time they were assigned legal counsel.

Another factor revealing clients' experiences of legal aid and meriting investigation on a broader level is whether clients would engage the same attorney should they need one again.

Table 12. Potential reliance on attorney in future assignment if needed. Prisoner survey 4, 15, 40.

Respondent	Would turn to same attorney	% F/M	n	avg
Female (n= 12)	yes	42	5	7.8
	no	42	5	5.0
	cannot say	17	2	7.0
Male (n= 40)	yes	65	26	9.1
	no	28	11	5.1 (n=10)
	cannot say	8	3	8.0

Female prisoners would turn to the same attorney more rarely than male prisoners would. Attorneys received clearly lower grades in cases where clients were unlikely to turn to them again. Then again, as potentially "loyal" customers, men gave higher grades to their attorneys. This prompts the question whether female prisoners were more critical than male prisoners in determining the grades they gave, or whether the grades were more justifiable inasmuch as potential client loyalty requires in practice that a prisoner has experience of an assignment that can be seen as at least fairly successful.

Client satisfaction may also be investigated with reference to whether defendants would recommend their attorneys to others.

Table 13. Recommendation of attorney to others, Prisoner survey 4, 16, 40.

Respondent	Would recommend attorney to others	% F/M	n	Avg.
Female (n= 12)	yes	50	6	8.0
	no	50	6	5.0
Male (n=40)	yes	63	25	9.1
	no	23	9	4.5 (n=8)
	cannot say	15	6	8.0

Of the female prisoners surveyed, one in two would recommend their attorney to their best friend. Male prisoners would do so somewhat more frequently. In the case of this question, like others, one can clearly see the correlation between the willingness to recommend an attorney and the grade given to the attorney as well as a more critical assessment on the part of female prisoners.

2.4. Overall impression of attorney

Another factor that may impact client satisfaction is a feature of the attorney's character.

Table 14. Attorney's character, Prisoner survey 4, 19, 40.

Respondent	Perception of attorney	% F/M	n	Avg.
Female (n=12)	friendly	25	3	6.3
	business-like	33	4	7.5
	distant	25	3	6.0
	other	17	2	5.5
Male (n=40)	friendly	18	7	9.4
	business-like	55	22	8.7 (n=21)
	distant	13	5	4.8
	other	15	6	6.5

In the case of female prisoners the correlation between the principal feature of the attorney's character and grades given exhibits a smaller dispersal than in the case of male prisoners. Among the attorneys assisting female prisoners, the highest grades were given to those who were perceived as business-like, whereas male prisoners gave the highest grades to attorneys perceived as friendly. The personality feature conveyed by the attorney in serving his or her client is affected by the personal preferences of both the attorney and the client. It should be noted that survey only included several characteristics and that a number of characteristics may simultaneously influence the overall picture a client develops of the aid received.

By contrast, the impression of trustworthiness conveyed by the attorney is one of the crucial factors in assessing the quality of the aid provided.¹²

Table 15. Trustworthiness of the attorney, Prisoner survey 4, 20, 40.

Respondent	Attorney	% F/M	n	Avg.	Number whose demands were put forward at trial
Female (n= 12)	very trustworthy	33	4	8.8	3
	trustworthy	17	2	6.0	0
	slightly trustworthy	25	3	6.0	1
	untrustworthy	25	3	4.3	0
Male (n=40)	very trustworthy	50	20	9.1	16
	trustworthy	28	11	8.6 (n=10)	6
	slightly trustworthy	15	6	4.7	0
	untrustworthy	5	2	4.0	0
	Cannot say	3	1	7.0	0

¹² According to *Sipilä*, clients considered keeping promises and trustworthiness to be the second most important characteristic required of an attorney (*Sipilä, Jorma: Asianajopalveluiden markkinointi. Suomen Asianajaliiton julkaisu 1/2000. Helsinki 2000, p. 13*). See also *Ahtinen 2017, 118—120*.

Worthy of note here is that female prisoners described their attorneys more often as untrustworthy and less often as very trustworthy than male prisoners did. Supporting the consistency of the responses is the fact that attorneys described as very trustworthy received more or less equally high grades regardless of the gender of the client. The results of the prisoner survey correlated quite consistently with the correlation between the perceived trustworthiness and the presentation of the client's demands at trial. In principle, the survey would make it possible to compare the correlations between all the questions but clarity of presentation and the small number of responses make it preferable to focus on the principal findings. An excessively extensive comparison of the survey items would make it difficult to maintain a focus on insights to be gained from the survey results as a whole.

The comparison can be extended with a sharper focus on the extent to which the clients felt their demands had been met in the legal aid assignment.

Table 16. Fulfilment of demands, Prisoner survey 4, 25, 40.

Respondent	Fulfilment of demands	% F/M	n	Avg.
Female (n=12)	fulfilled	33	4	8.3
	important consideration overlooked	58	7	5.7
	Cannot say	8	1	5.0
Male (n=39)	fulfilled	56	22	9.1
	important consideration overlooked	23	9	6.3
	Cannot say	21	8	6.6

The responses indicate that over half of the female prisoners felt that their attorneys had not fulfilled all of their important demands. By contrast, over half of the male prisoners felt that their attorney had fulfilled all of theirs. Female prisoners, whether satisfied or dissatisfied with the fulfilment of demands, gave their attorneys somewhat lower grades than did male prisoners. This finding reflects that female prisoners were more critical than male in their assessment of attorneys.

In situations where attorneys refused to proceed as requested, the crucial consideration was how well they justified the refusal. The soundness of the justification and the grade given to the attorney largely coincided, with women's responses on the item being more than men's.

Table 17. Justification for refusing requests to take a particular course of action, Prisoner survey 4, 28, 40.

Respondent	Attorney justified refusal	% F/M	n	avg
Female (n=10)	fully	20	2	7.5
	to some extent	10	1	4.0
	not at all	40	4	5.3
	cannot say	30	3	6.7
Male (n=27)	fully	41	11	9.1
	to some extent	15	4	7.0
	not at all	26	7	5.6
	cannot say	19	5	7.2

Proportionately, male prisoners felt twice as often that attorneys fully justified refusals to fulfil requests. Then again, male prisoners who stated that their attorneys provided full

justifications gave their attorneys far better grades than did female prisoners. These findings suggest that presentation of the justification might have been more convincing for male than for female prisoners. Also at work here may be the generally more critical attitude of female prisoners towards their attorney.

When declining to pursue a request made by a client, it is essential that the attorney be able to explain to him or her in an understandable manner why the request cannot be carried out.

One of the key elements of a fair trial is the right to be heard (the contradictory principle).¹³ In a trial, the defendant's right to a contradictory trial is often realized by his or her attorney. This being the case, it is an important condition for realization of the right that an attorney listen to his or her client. The prisoner survey sought to examine how successful prisoners considered this process.

Table 18. Realization by attorney of right to be heard, Prisoner survey 4, 29, 40.

Respondent	Attorney	% F/M	n	avg
Female (n=12)	listened sufficiently	33	4	8.8
	did not listen sufficiently	50	6	5.2
	cannot say	17	2	6.0
Male (n=39)	listened sufficiently	79	31	8.8 (n=30)
	did not listen sufficiently	15	6	4.5
	cannot say	5	2	7.5

The survey indicates that male prisoners felt more than twice as often that their attorneys listened to them sufficiently.

It is also important in a legal aid assignment that the client should feel that the attorney has served the client's best interest.

Table 19. Dedication to the defendant's best interest, Prisoner survey 4, 30, 40.

Respondent	Attorney acted in my best interest	% F/M	n	avg
Female (n=12)	yes	33	4	8.8
	no	33	4	5.0
	cannot say	33	4	5.8
Male (n=40)	yes	75	30	8.9 (n=29)
	no	15	6	4.7
	cannot say	10	4	6.0

As in the case of the previous item, male prisoners felt more than twice as often as female prisoners that their attorneys had acted in their best interest.

The success of a legal aid assignment can perhaps be measured more concretely by examining how frequently clients and attorneys disagreed.

¹³ According to the Finnish Constitution (§21.2), the right to be heard is guaranteed by law.

Table 20. Frequency of disagreement, Prisoner survey 4, 31, 40.

Respondent	Significant disagreement with attorney	% F/M	n	avg
Female (n=12)	no	58	7	7.3
	yes	42	5	5.4
Male (n=38)	no	76	29	8.8
	yes	21	8	4.6 (n=7)
	yes, but the attorney advised on means of legal protection	3	1	9.0

On this item, too, female prisoners were more critical than male but the distribution of responses was somewhat more even. As was the case with male respondents, a majority of female respondents stated that there were no significant disagreements during the assignment; however, their assessment of the attorneys was more critical. This finding is yet another indication that female prisoners were on average more critical of their attorneys than male prisoners were.

2.5. Extra-procedural question

One of the key functions of the criminal justice process is to reduce recidivism. The survey undertook to determine the attorneys' views as to whether they had an opportunity to reduce the likelihood of their client committing another offence.

Table 21. Attorney's opportunity to affect recidivism, Prisoner survey 4, 37, 40.

Respondent	Opportunity to affect recidivism	% F/M	n	avg
Female (n=11)	yes	18	2	7.5
	no	55	6	6.3
	cannot say	27	3	6.0
Male (n=38)	yes	24	9	7.6
	no	58	22	8.3 (n=21)
	cannot say	18	7	8.0

The survey indicates that female prisoners felt somewhat less frequently than male prisoners that their attorney had an effect on whether they would commit another offence. Then again, a slightly higher proportion of men felt that the attorney's role was insignificant where recidivism was concerned. The findings on this item indicate that male and female prisoners were uniformly critical as regards the role their attorney played in reducing the likelihood of their committing another offence. Here it merits pointing out that the offences committed by the female prisoners surveyed were more often single acts than in the case of male prisoners. Accordingly, the likelihood of recidivism among the women was lower.

In the course of legal proceedings, a client might feel that he or she needs other support in addition to legal assistance. The study thus examined whether defendants had felt the need for a separate support person.

Table 22. Defendants' perceived need for support person, Prisoner survey 4, 38, 40.

Respondent	Would have required help of a separate support person	% F/M	n	avg
Female (n=11)	yes	18	2	5.0
	no	36	4	7.5
	cannot say	45	5	6.2
Male (n=39)	yes	23	9	6.3
	no	67	26	8.5
	cannot say	10	4	8.3 (n=3)

The table shows that a larger proportion of male prisoners indicated they felt no need for a separate support person; almost one in two female prisoners could not say, which detracts from the comparability of the results. In any event, in the case of both male and female respondents, those who took a negative view of having a support person gave their attorneys better grades. This finding suggests that a potential need for extra support during the legal assignment might be reflected as a somewhat greater dissatisfaction with one's attorney.¹⁴

2.6 Summary

The survey indicated that on average female prisoners were clearly more critical than male prisoners with respect to both the items being compared and the grades they gave. The explanation for this may lie in women's generally more critical stance on client service or in men's more moderate attitude and, objectively speaking, excessively favourable assessment. The core issue here is whether attorneys know how to treat female criminal defendants as naturally as they do male defendants. Crime might be more commonly seen as a male phenomenon, with this then reflected as less confidence when dealing with female defendants. As defendants women may also feel that their position in criminal proceedings is less secure than that of men. It goes without saying, however, that in terms of attorney loyalty female defendants should feel every bit as secure about their position as male defendants.

The survey provided a rather small sample for comparing the position of male and female defendants in criminal proceedings. Accordingly, this analysis serves primarily as an introduction intended to spark discussion in the research community. At the same time, it should be pointed out that not even the most comprehensive prisoner survey can yield more than averages relating to items queried.

Legal aid assignments must always be examined on a case-by-case basis and the circumstances in individual cases may deviate a great deal indeed from the average in either direction. Every prisoner responding to a survey has a personal history, a series of events leading up to imprisonment. In this light, an analysis of even a single prisoner's responses may provide relevant information.

Yet, even inconclusive results obtained in very limited surveys may provide quite useful directions indeed for further inquiry in the operative examination of issues. The focus is not an exact mathematical description of a state of affairs - obtained for example by calculating

¹⁴ See below (pp. 16—17) for findings of the attorney's perspective on the need for extra-procedural contacts when assisting a female defendant.

average grades or the proportion of respondents who were dissatisfied with the service they received - but identification of what may be a fundamental problem through examination of legal aid assignments. The purpose of the present article was not to so much to draw generalizations on the importance of the gender of legal aid clients for ow assignments are handled as to highlight the importance of loyalty among legal aid attorneys when carrying out assignments regardless of the gender of the client.

3. Results of the survey of attorneys on providing legal aid to female defendants

An analysis of the prisoner survey necessarily requires attention to the perspective of the service provider, that is, the attorney. The survey of attorneys conducted as part of my doctoral thesis did not address the potential significance of the gender of the client, whereby a new survey was designed and carried out. The survey was implemented using Webropol®. Information on it and a link to it were provided in the electronic newsletter of the Finnish Bar Association sent out on 18 October 2016. Two weeks were allowed for responses, during which time 45 attorneys responded. As the newsletter goes out to the entire membership of the Bar Association, the responses obtained can be considered a basis for generalizations, unlike the prisoner surveys carried out in two prisons. In practice the responses to the attorney survey were divided equally between male and female attorneys, which further enhances generalizability of the findings. Moreover, the proportions of male and female attorneys who assisted female defendants were fairly equal.

Table 23. Distribution by gender of criminal defence attorneys. Attorney survey, items 1, 4.

	Proportion of women receiving legal aid (a) among criminal defendants	Attorney (d)		Total
		Female	Male	
1	less than 10 %	8	11	19
2	10—19 %	7	8	15
3	20—29 %	4	3	7
4	30—39 %	2	-	2
5	40—49 %	1	1	2
	total	22	23	45
	average	2.1	1.8	2.0

Among the attorneys responding, the proportion of legal aid assignments involving female defendants ranged from 10 to 19 per cent. The survey indicated that a female defendant is represented by a female attorney somewhat more frequently. In Finland in 2015, 17 per cent of those convicted of an offence (9,400) were women. In courts of first instance women are far more frequently ordered to pay fines or given probation than they are sentenced to community service or unconditional imprisonment.¹⁵ The average proportion of women in the prison population in Finland in 2015 was some 7.5 per cent (231), the mean prison

¹⁵ Suomen virallinen tilasto (SVT): Syytetyt, tuomitut ja rangaistukset [verkkojulkaisu]. ISSN=1798-6680. 2015, 1. Katsaus rangaistuksiin 2015 . Helsinki: Tilastokeskus [viitattu: 8.11.2016]. Saantitapa: http://www.stat.fi/til/syyttr/2015/syyttr_2015_2016-09-30_kat_001_fi.html. Statistics Finland: Charged, sentenced and sentences [online publication]. ISSN=1798-6680. 2015, 1. Overview of sentences 2015. Helsinki: Statistics Finland [last accessed 8.11.2016]. Available at http://www.stat.fi/til/syyttr/2015/syyttr_2015_2016-09-30_kat_001_fi.html.

population being a total of 3 086.¹⁶ The attorney survey achieved a relatively representative sample of the attorneys who had assisted female defendants.

One aim of the attorney survey was to compare respondents' observations on the possible likelihood of problems arising when assisting female and male defendants.¹⁷ To facilitate the comparison, the questions on female and male defendants are juxtaposed in what follows:

Table 24. Occurrence of problems in aiding clients, by gender of client. Attorney survey, questions 2, 3.

	Aid	Female defendant (b)	Male defendant (c)	Total
1	no problems in practice	13	8	21
2	problems rare	26	23	49
3	some problems	6	14	20
	Total	45	45	90
	average	1.8	2.1	2.0

The responses to the attorney survey differ markedly from the findings of the prisoner survey. The attorneys' responses indicate that on average somewhat fewer problems arose when assisting female defendants than when assisting male defendants. Then again, the frequency with which problems arise and the client's experience of service in the assignment are not necessarily identical.

The table presenting the responses to the attorney survey shows the rather wide distribution of responses by response type. The most common quantitatively identical response was that given by male attorneys (5 persons) indicating that they rarely found assisting female or male defendants to be problematic. Some 10 to 19 per cent of the assignments handled by these attorneys involved female clients.

Respondents were given an opportunity to comment on the differences between representing men and women. The survey was implemented such that every response could be analysed anonymously on a respondent-by-respondent basis. This made it possible to compare the verbal response with the quantitative one.

According to one attorney, "People are people. Gender is a matter of upbringing (1111¹⁸).". According to a similar response, "There were no differences between them that had to do with gender. If there are problems, they're not caused by gender (1131). In the same vein, another attorney also stated, "No differences (1221). Similarly, one respondent reported that "in practice I have not noted any differences due to gender (2221)."

Another attorney noted: "there are two kinds of defendant: most trust me as an attorney, regardless of whether they are men or women; then there a few difficult cases of both genders who come (to my or any other attorney's) office reluctantly or even telling me lies (2232)."

¹⁶ Rikosseuraamuslaitos, Etusivu » Rikosseuraamuslaitos » Tilastot » Vangit [viitattu 8.11.2016]. Saantitapa: <http://www.rikosseuraamus.fi/fi/index/rikosseuraamuslaitos/tilastot/vangit.html>.

Criminal Sanctions Agency, homepage, Statistics, accessed 8.11.2016,, available at:

¹⁷ See also the criticism of the question itself, on p. 18.

¹⁸ The numbers following verbal responses indicate the attorneys' responses in the order of questions.

Naturally, the general resentment a client feels at needing legal aid and an attorney will lead to negative experiences as a client. The following responses also suggest that gender had no importance where assisting criminal defendants was concerned:

“I don’t feel there is any difference that has to do with gender; they’re all people and the differences are a matter of personality, not gender. Their situation also makes a big difference (4112). I haven’t noticed any difference. If there is a problem it doesn’t have to do with the person’s gender but with other personality traits or cultural differences (4222).

The focus on gender in the attorney survey was also obviously a rare perspective to consider. The surprising nature of the theme, but also the possibility that differences may exist, is reflected in the following response:

“I’ve never thought about the difference before. An assignment is an assignment and I am just as happy to take on a male as a female client. My own feeling in practice is that there are more male defendants than female. Maybe a man would rather have a male attorney than a female one and a woman a female attorney rather than a male one. Then again, in a big office, as far as I know, the case is taken by whoever is available regardless of gender (2221).

The following response also indicates there may be differences of some degree depending on whether the client is male or female.

One attorney said that gender may in rare instances be important for female defendants: “When asked, a woman sometimes (1 in 15 times) specifically requests a male attorney and sometimes (again 1 in 15 times) a female attorney. Male defendants never make special requests (3111).”

One response drew attention to whether the defendant was a repeat offender:

“Most of the time the women I have been assigned to help have been first-time offenders, whereas the men are recidivists. For this reason the relation between a female client and her attorney is often a closer one (1222).” The importance of the client being a first-time offender might also have played a part in the response “women have a tremendous need to explain what they have done and why (2221).”

The following response also reflects an attorney’s right to choose his or her client.¹⁹ The actual reasons why a client is accepted may be complex indeed:

“Generally I only accept assignments from clients whose innocence I am fairly certain of for one reason or another; this makes it easy to work together and makes the work seem especially worthwhile. Women have a slightly greater need to discuss and analyse things, which causes problems more than anything because of the (excessive) amount of time required (3212).”²⁰

¹⁹ See B 1 Code of conduct for lawyers (Adopted at the meeting of the Delegation of the Finnish Bar Association on 15 January 2009.), 5.1.2.

²⁰ Compare with the item on diligence above, p. 4, Table 4.

The foregoing response suggests that female defendants might have more of a need for extra-procedural assistance than male defendants do. This greater need is reflected in the following answers:

“Female defendants often do not know what has happened, that is, what the men have done. In providing aid, you have to start farther afield than with men. In addition, women’s knowledge of criminal procedure and its stages is not as good (3232).”

One attorney pointed out, relevantly, that “the question could be broken down in terms of the client’s role, that is, defendant/affected party. In practice, assisting an affected party is more challenging in that his or her conflicted situation comes more emphatically to the fore. Women usually get the idea that an attorney is somehow an extension of the public health care services and they typically have a greater need to discuss the case with their attorney.²¹ Of course, the socioeconomic status of the client also plays a decisive role. Aiding a client with a solid income with all the clarifications and contacts required is as a rule more challenging. Naturally there are also criminal matters in which all of the parties are women; such cases may become very challenging very quickly and reaching an agreement, for example, among female parties is often difficult (2221).”

One attorney noted the following: “As a rule, providing legal aid to criminal defendants involves few if any problems. If problems do come up, there is no clear difference between the genders; one is no more difficult than the other but the problems are different. Men typically are hard to reach and they do a poor job when it comes to contacting their attorneys or keeping them informed. In addition, when they appear before the court men more frequently want to change the account of events given in the pre-trial investigation; this poses challenges for the defence attorney. Female clients sometimes have difficulty understanding that the defence attorney has no other responsibilities than to assist them in legal matters (2222).”

The need for extra-procedural support reflected in the foregoing responses can be seen as a finding urging further research on the need for a support person system.²² That women had more critical responses than men did might sooner reflect a more general need for extra-procedural support than problems with the assignment as such. The partial lack of such support might then appear as a degree of dissatisfaction with one’s attorney. Attorneys do not necessarily become aware of this dissatisfaction if it exists. It is harder to give feedback face to face than after the fact in a survey. Indeed, despite the questions being as objective as possible, a survey can be very much a matter of waking a “sleeping bear”, that is, fishing for criticism.

²¹ Compare with the item on support persons above, p. 13, Table 22.

²² On the question of the need for a support person, see *Ahtinen* 2017, p. 285–291. The research draws attention to the question whether criminal defendants should have access to extra-procedural aid, that is, the services of a support person, and to the potential of support persons to facilitate handling of the case proper.

The approach taken in the attorney survey prompted justifiable criticism by one attorney:

“The way the questions were posed is ludicrous. Gender has no significance. I guess that was the idea here – to see if anyone reacted. I myself am culturally intersexual but assumed to be male (5111)”.²³

The attorney not only questions gender as a factor in legal aid assignments but also the design of the questionnaire. Speculation that the purpose of the survey was to prompt a reaction was right on the mark. The questionnaire was in fact designed to determine, without leading questions, the views of members of the Bar on a theme that came up in the prisoner survey. The ease of assisting female and male defendants was examined as objectively as possible in order to gather data that would allow for comparisons. At the same time the opportunity to provide verbal answers made it possible to present more detailed opinions – some quite surprising in fact – in as free a format as possible. The focus on gender might have reduced interest in answering the questionnaire for some respondents, but increased interest for others.

In light of the responses to the attorney survey it is more relevant to investigate the possible impacts of special characteristics of clients on efforts to assist them than the direct importance of gender for any possible problems that arise during an assignment. Yet, it has to be acknowledged that certain special considerations take on a heightened importance when assisting female clients, for example the client’s being a first-time offender and having a need for more general support and for someone who is willing to listen. Among other things, giving due attention to these special needs might serve to even out any differences between female and male defendant as regards client satisfaction.

The range of issues examined here could be investigated through a new, more focused prisoner survey. The issue-area could offer a relevant research topic relating to the work of attorneys in essentially any country. It could also be a fruitful line of inquiry in comparative law.

It is my hope that this article will prompt national and international research or at least discussion of the issues taken up in the text.

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²³ In empirical research based on a survey, feedback can be received in real time.

4. Appendixes

4.1. Questions from the prisoner survey that are analysed in the article²⁴

Question 2.

In my opinion, my trial was:

- ☐ fair
- ☐ fair to some extent
- ☐ not fair
- ☐ cannot say

Question 3

The sentence I received after my trial was:

- ☐ fair
- ☐ partly fair
- ☐ unfair
- ☐ cannot say

Question 4.

Gender:

- ☐ male
- ☐ female

Question 5.

Age:

- ☐ under 30 years
- ☐ 30—50 years
- ☐ over 50 years

Question 6.

My prison sentence was:

- ☐ less than 2 years
- ☐ 2—4 years
- ☐ over 4 years

Question 8.

I am in prison for the:

- ☐ first time
- ☐ second time
- ☐ third time or more

Question 10.

Gender of your attorney:

- ☐ male
- ☐ female

Question 12.

☐ I had the same attorney throughout the trial.

☐ I changed attorneys times during the proceedings.

Question 14.

My attorney:

☐ had assisted me before (number of times:)

☐ had not assisted me before

Question 15.

If I need a criminal attorney again:

☐ I would like my case to be handled by the last attorney I had.

☐ I would not like my case to be handled by the last attorney I had.

☐ I cannot say.

Question 16.

☐ I could recommend the last attorney I had to my best friend.

☐ I would not recommend the last attorney I had to my best friend.

☐ I cannot say.

Question 19.

How would you describe your attorney's personality?

My attorney was:

- ☐ friendly
- ☐ business-like
- ☐ distant
- ☐ other (Please specify)
- ☐ I cannot say.

Question 20.

Please describe your attorney's trustworthiness.

My attorney was:

- ☐ very trustworthy
- ☐ trustworthy
- ☐ slightly untrustworthy
- ☐ untrustworthy
- ☐ I cannot say.

²⁴ Ahtinen 2017, appendixes.

Question 22.

Please describe how approachable you found your attorney to be:

- ☐ My attorney was easy to approach.
☐ My attorney was not easy to approach.
☐ I cannot say.

Question 24.

Please describe how diligent you found your attorney to be.

My attorney was:

- ☐ very diligent
☐ sufficiently diligent
☐ slightly indifferent
☐ totally indifferent
☐ I cannot say.

Question 25.

To what extent do you feel you had your demands brought out by your attorney in the criminal proceedings?

☐ I feel that all the demands I had were brought out adequately in the proceedings.

☐ I cannot say.

☐ I feel that there was some important issue that was not brought up in the overall process.

If you have chosen this alternative, what was the issue that was not brought up and in what situation was it not presented?

Question 28.

If my attorney could not fulfil all my requests, he/she:

☐ explained in detail why he/she could not do so.

☐ explained to some extent why he/she could not do so.

☐ did not explain at all why he/she could not do so.

☐ I cannot say

Question 29.

☐ My attorney listened to me sufficiently

☐ My attorney did not listen to me sufficiently

☐ I cannot say

Question 30.

Did your attorney act in your best interest in handling your case?

☐ Yes

☐ I cannot say

☐ No. If you choose this alternative, please state in what respect your attorney's actions were not in your best interests.

Question 31.

☐ I had no serious disagreement with my attorney over how my case was handled.

☐ I had a serious disagreement with my attorney over how my case was handled. If you choose this alternative, did your attorney advise you on the means available for resolving disagreements or for investigating an attorney's actions? ☐ yes ☐ no

Question 37.

☐ In my opinion, attorneys can contribute to defendants not becoming repeat offenders after the trial

☐ In my opinion, the role of an attorney has no bearing on recidivism

☐ I cannot say

Question 38.

☐ I would have needed a separate support person in addition to my attorney during the proceedings

☐ I felt no need for a separate support person in addition to my attorney during the proceedings.

☐ I cannot say

Question 40.

Please give your attorney an overall grade using the school grading scale:

☐ Outstanding 10

☐ Excellent 9

☐ Satisfactory 8

☐ Satisfactory 7

☐ Fair 6

☐ Fair 5

☐ Poor

Thank you very much for answering the survey.

4.2. Survey of attorneys providing legal aid to criminal defendants

Dear _____

I am writing my doctoral thesis titled *The Obligation of Loyalty of Criminal Defence Attorneys*. The thesis research has included a survey of prisoners and of attorneys. The pre-examiners for the thesis were designated on 14 September 2016.

In the course of my research, the question has arisen of the impact of the gender of the defendant and attorney on the legal aid provided to the defendant in the criminal proceedings. It is my attention to write an article on this particular topic for submission to an international publication. If you could take the time to respond to the following questionnaire, the answers you provide would greatly improve the article. The quantitative items should require no more than two minutes. Anonymity will be ensured in the reporting of all results.

Please choose one alternative in each of the following items.

1) The proportion of female defendants in my criminal defence assignments has been:

- 1) less than 10 %
- 2) 10—19 %
- 3) 20—29 %
- 4) 30—39 %
- 5) 40—49 %
- 6) at least 50 %

2) What, on average, are your experiences of providing legal aid to female criminal defendants? Please describe the frequency of problems attributable to the defendant.

- 1) No problems occur in practice
- 2) Problems occur rarely
- 3) Problems occur to some extent
- 4) Problems are common

3) What, on average, are your experiences of providing legal aid to male criminal defendants?

- 1) No problems occur in practice
- 2) Problems occur rarely
- 3) Problems occur to some extent
- 4) Problems are common

4) Your gender

- 1) male
- 2) female

5) Comments on the differences between aiding male and female defendants?

Thank you very much for answering the survey.